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Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2563

AN ACT

AMENDING SECTIONS 9-505, 9-506 AND 9-510, ARIZONA REVISED STATUTES; RELATING TO CABLE TELEVISION SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-505, Arizona Revised Statutes, is amended to read:

9-505. Definitions

In this article, unless the context otherwise requires:

1. "Area of jurisdiction" means that part of a city or town, or that part of the unincorporated area of a county, or both when applied to a cable television system within parts of more than one jurisdiction, for which a license is issued.

2. "CABLE OPERATOR" MEANS A PERSON THAT IS ISSUED A LICENSE BY THE LICENSING AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS.

3. "CABLE SERVICE" MEANS THE TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING, OR OTHER PROGRAMMING SERVICE AND SUBSCRIBER INTERACTION, IF ANY, THAT IS REQUIRED FOR THE SELECTION OR USE OF VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

~~2- 4. "Cable television system" means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals together with such other signals as authorized by the federal communications commission and the licensing authority, by wire or cable to subscribing members of the public who pay for such service, but the term shall not include~~ CONSISTING OF A SET OF CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION AND CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE THAT INCLUDES VIDEO PROGRAMMING AND THAT IS PROVIDED TO MULTIPLE SUBSCRIBERS WITHIN A COMMUNITY. CABLE TELEVISION SYSTEM DOES NOT INCLUDE:

(a) ~~Any such~~ A facility that serves fewer than fifty subscribers.

(b) ~~Any such~~ A facility that serves ~~only the residents of one or more apartment dwellings under common ownership, and commercial establishments located on the premises of such apartment dwellings~~ SUBSCRIBERS WITHOUT USING ANY PUBLIC STREET, ROAD OR ALLEY.

(c) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE TELEVISION SIGNALS OF ONE OR MORE TELEVISION BROADCAST STATIONS.

(d) A FACILITY OF A COMMON CARRIER THAT IS SUBJECT, IN WHOLE OR IN PART, TO 47 UNITED STATES CODE SECTIONS 201 THROUGH 276, EXCEPT THAT THE FACILITY IS A CABLE TELEVISION SYSTEM, OTHER THAN FOR PURPOSES OF 47 UNITED STATES CODE SECTION 541(C), TO THE EXTENT THE FACILITY IS USED IN THE TRANSMISSION OF VIDEO PROGRAMMING DIRECTLY TO SUBSCRIBERS, UNLESS THE EXTENT OF THE USE IS SOLELY TO PROVIDE INTERACTIVE ON-DEMAND SERVICES.

(e) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 UNITED STATES CODE SECTION 573.

(f) A FACILITY OF AN ELECTRIC UTILITY THAT IS USED SOLELY FOR OPERATING ITS ELECTRIC UTILITY SYSTEM.

~~3-~~ 5. "Existing cable television systems" means a cable television system in operation on April 1, 1974, a cable television system under

1 construction on April 1, 1974, or a cable television system which had
2 received authorization for construction as of April 1, 1974.

3 6. "GROSS REVENUES" MEANS ALL CASH, CREDITS, PROPERTY OR OTHER
4 CONSIDERATION RECEIVED DIRECTLY BY A CABLE OPERATOR FROM SUBSCRIBERS WITHIN
5 THE AREA OF JURISDICTION FROM THE PROVISION OF CABLE SERVICES. GROSS
6 REVENUES INCLUDE FEES CHARGED TO SUBSCRIBERS FOR CABLE SERVICE AND
7 INSTALLATION OF CABLE SERVICE, RENTAL OR SALE CHARGES FOR EQUIPMENT USED TO
8 RECEIVE CABLE SERVICE, CHANGE IN SERVICE FEES, LATE FEES AND DISCONNECTION OR
9 RECONNECTION FEES. GROSS REVENUES DO NOT INCLUDE ANY ADMINISTRATIVE FEES,
10 BAD DEBT, AMOUNTS COLLECTED FROM SUBSCRIBERS FOR ANY LICENSE FEES, TAXES OR
11 OTHER FEES OR CHARGES IMPOSED ON SUBSCRIBERS OR TRANSACTIONS WITH SUBSCRIBERS
12 BY THE LICENSING AUTHORITY, STATE OR OTHER GOVERNMENTAL UNIT AND COLLECTED
13 AND PAID BY THE CABLE OPERATOR ON BEHALF OF THE GOVERNMENTAL UNIT AND
14 AFFILIATE REVENUE FROM SALES OF PRODUCTS IF THE PRODUCTS ARE NOT A CABLE
15 SERVICE OR ARE NOT DIRECTLY RELATED TO THE USE OF A CABLE SERVICE.

16 ~~4.~~ 7. "Intergovernmental contract" means the joint exercise of powers
17 authorized by title 11, chapter 7, article 3.

18 ~~5.~~ 8. "License" means that ordinance or resolution which contains the
19 right, authority or grant, given by a licensing authority enabling ~~the~~
20 ~~license holder~~ A PERSON to construct, operate and maintain a cable television
21 system.

22 ~~6.~~ 9. "Licensing authority" means the board of supervisors of a
23 county or the governing body of an incorporated city, INCLUDING A CHARTER
24 CITY, or town.

25 10. "OTHER PROGRAMMING SERVICE" MEANS INFORMATION THAT A CABLE OPERATOR
26 MAKES AVAILABLE TO ALL SUBSCRIBERS GENERALLY.

27 11. "VIDEO PROGRAMMING" MEANS PROGRAMMING THAT IS PROVIDED BY, OR
28 GENERALLY COMPARABLE TO PROGRAMMING PROVIDED BY, A BROADCAST TELEVISION
29 STATION.

30 Sec. 2. Section 9-506, Arizona Revised Statutes, is amended to read:

31 ~~9-506.~~ Authority to issue license: limitations

32 A. For the purpose of authorizing and regulating the construction,
33 operation and maintenance of cable television systems, the licensing
34 authority of a city or town for an incorporated area, or the licensing
35 authority of the county for unincorporated areas, either individually or
36 jointly by intergovernmental contract, may issue a license to any person to
37 use public streets, roads and alleys, and shall impose conditions,
38 restrictions and limitations upon the use of such public streets, roads and
39 alleys, and upon the construction, operation and maintenance of cable
40 television systems.

41 B. Any such licensing authority may adopt resolutions or ordinances
42 implementing and controlling the license or joint license, SUBJECT TO THE
43 LIMITATIONS IN THIS SECTION. The license issued by a licensing authority may
44 contain ~~provisions,~~ OTHER TERMS AND CONDITIONS and may ~~establish~~ AUTHORIZE a
45 ~~permit~~ LICENSE fee, ~~not to exceed~~ ON GROSS REVENUES. IN ADDITION TO THE
46 LIMITATIONS OF THIS SECTION, THE LICENSE IS SUBJECT TO the limits established

1 by THE COMMUNICATIONS ACT OF 1934, AS AMENDED (47 UNITED STATES CODE SECTIONS
2 151 THROUGH 615b) AND the federal communications commission.

3 C. OTHER THAN THE LICENSE FEE ON GROSS REVENUES AUTHORIZED BY THIS
4 ARTICLE AND AS PROVIDED IN PARAGRAPH 1 OF THIS SUBSECTION, NO LICENSING
5 AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PAY OR COLLECT ANY MONETARY OR
6 IN-KIND LICENSE FEE, TAX, FEE OR CHARGE, HOWEVER DENOMINATED. LICENSE FEES,
7 TAXES, FEES AND CHARGES INCLUDE ALL TAXES, FEES OR CHARGES ON THE PRIVILEGE
8 OF ENGAGING IN THE BUSINESS OF PROVIDING CABLE SERVICES OR RELATED TO USE OF
9 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICES, ALL RENTS,
10 APPLICATION, CONSTRUCTION, PERMIT, INSPECTION, INCONVENIENCE AND OTHER FEES
11 AND CHARGES RELATED TO A CABLE OPERATOR'S USE OF THE PUBLIC STREETS, ROADS
12 AND ALLEYS, AND ALL CAPITAL COSTS AND CHARGES FOR, OR IN SUPPORT OF THE USE
13 OF, ANY CHANNEL CAPACITY PROVIDED BY THE CABLE OPERATOR UNDER SUBSECTION D OF
14 THIS SECTION, EXCEPT THAT:

15 1. ANY TRANSACTION PRIVILEGE TAX OTHERWISE AUTHORIZED BY LAW TO BE
16 LEVIED ON THE BUSINESS OF PROVIDING CABLE SERVICES OR IN RELATION TO USE OF
17 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICES MAY BE LEVIED
18 ON A CABLE OPERATOR, IF THE TAX IS LEVIED ONLY ON GROSS REVENUES AND THE RATE
19 OF THE TAX IS SUBJECT TO PARAGRAPH 3 OF THIS SUBSECTION, THIS SUBSECTION DOES
20 NOT AUTHORIZE THE IMPOSITION OF A TRANSACTION PRIVILEGE TAX ON INTERSTATE
21 TELECOMMUNICATIONS SERVICES.

22 2. THE LICENSE FEE AND ANY TRANSACTION PRIVILEGE TAX CONSTITUTE A
23 FRANCHISE FEE WITHIN THE MEANING OF 47 UNITED STATES CODE SECTION 542(g)(1).

24 3. UNDER NO CIRCUMSTANCES MAY THE TOTAL OF THE RATES OF THE LICENSE
25 FEE AND OF ANY TRANSACTION PRIVILEGE TAX ON GROSS REVENUES LEVIED OR ASSESSED
26 BY A LICENSING AUTHORITY FOR THE PRIVILEGE OF PROVIDING CABLE SERVICES AND
27 RELATED USE OF THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICE
28 EXCEED A RATE OF FOUR PER CENT, EXCEPT DURING THE TRANSITION PERIOD FOR
29 CERTAIN LICENSES PROVIDED IN SUBSECTION H OF THIS SECTION.

30 4. ANY REDUCTION IN THE AMOUNT OF FEES, TAXES OR OTHER CHARGES PAID BY
31 A CABLE OPERATOR AND ITEMIZED TO SUBSCRIBERS AS A RESULT OF THE
32 IMPLEMENTATION OF THIS SUBSECTION SHALL BE PASSED ON TO REDUCE THE CHARGES TO
33 SUBSCRIBERS.

34 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSING AUTHORITY
35 AND A CABLE OPERATOR MAY AGREE IN A LICENSE TO IN-KIND SERVICES AND IN-KIND
36 PAYMENTS FOR USE OF THE PUBLIC STREETS, ROADS AND ALLEYS. SUBJECT TO
37 PARAGRAPH 2 OF THIS SUBSECTION, THE LICENSE SHALL BE STRUCTURED SO THAT THE
38 TOTAL VALUE OF ALL IN-KIND SERVICES PROVIDED AND IN-KIND PAYMENTS MADE FOR
39 USE OF THE PUBLIC STREETS, ROADS AND ALLEYS TO PROVIDE CABLE SERVICES UNDER
40 THE LICENSE IS LESS THAN OR EQUAL TO AND IS OFFSET AGAINST THE LICENSE FEE
41 AND ANY TRANSACTION PRIVILEGE TAX LEVIED OR ASSESSED PURSUANT TO SUBSECTION C
42 OF THIS SECTION. THE VALUATION OF ANY IN-KIND SERVICES OR PAYMENTS SHALL BE
43 SET FORTH IN THE LICENSE AT FAIR MARKET VALUE. A POLITICAL SUBDIVISION SHALL
44 NOT REQUIRE A CABLE OPERATOR TO PROVIDE IN-KIND SERVICES, MAKE IN-KIND
45 PAYMENTS OR PAY ANY FEE IN ADDITION TO THE LICENSE FEE AND ANY TRANSACTION

1 PRIVILEGE TAX LEVIED OR ASSESSED AS PROVIDED IN SUBSECTION C OF THIS SECTION
2 AS A CONDITION OF ISSUING A LICENSE TO PROVIDE CABLE SERVICES, EXCEPT THAT:

3 1. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PROVIDE
4 CHANNEL CAPACITY TO TRANSMIT NOT MORE THAN TWO CHANNELS OF PUBLIC, EDUCATION
5 OR GOVERNMENTAL ACCESS OR PUBLIC SAFETY PROGRAMMING OVER WHICH THE CABLE
6 OPERATOR DOES NOT EXERCISE EDITORIAL CONTROL AND WHICH REGULARLY DISPLAY AN
7 UNOBTRUSIVE LOGO OR OTHER SUITABLE IDENTIFIER OF THE CABLE OPERATOR AS SET
8 FORTH IN THE LICENSE.

9 2. THE VALUE OF THE CHANNEL CAPACITY PURSUANT TO PARAGRAPH 1 OF THIS
10 SUBSECTION IS NOT INCLUDED IN THE TOTAL VALUE OF ALL IN-KIND SERVICES
11 PROVIDED AND IN-KIND PAYMENTS MADE.

12 E. THIS SECTION DOES NOT PROHIBIT A CABLE OPERATOR FROM PROVIDING
13 IN-KIND SERVICES OR MAKING IN-KIND PAYMENTS IN THE AREA OF JURISDICTION UNDER
14 AN AGREEMENT WITH THE LICENSING AUTHORITY THAT IS NOT PART OF, OR ENTERED
15 INTO AS A CONDITION OF BEING ISSUED, A LICENSE TO PROVIDE CABLE SERVICES.

16 F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSING AUTHORITY
17 MAY REQUIRE THAT A CABLE OPERATOR:

18 1. BEAR REASONABLE COSTS THAT ARE ASSOCIATED WITH DAMAGE CAUSED TO
19 PUBLIC HIGHWAYS BY CONSTRUCTION, MAINTENANCE AND OPERATION OF ITS FACILITIES
20 IN THE PUBLIC HIGHWAYS AND THAT ARE IMPOSED ON A COMPETITIVELY NEUTRAL AND
21 NONDISCRIMINATORY BASIS IN RELATION TO COSTS BORNE BY TELECOMMUNICATIONS
22 CORPORATIONS UNDER SECTION 9-582, SUBSECTION C.

23 2. PAY FINES, FEES, CHARGES OR DAMAGES FOR BREACH OF THE TERMS AND
24 CONDITIONS OF THE LICENSE.

25 G. NOTHING IN THIS SECTION AFFECTS THE AUTHORITY OF A LICENSING
26 AUTHORITY TO MANAGE THE PUBLIC STREETS, ROADS AND ALLEYS WITHIN ITS
27 BOUNDARIES OR TO EXERCISE ITS POLICE POWERS.

28 H. A LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION
29 IS ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND IS NOT SUBJECT TO THIS
30 SECTION. IF AN EXISTING LICENSE IS EXTENDED OR RENEWED FOR A TERM THAT
31 BEGINS AFTER JUNE 30, 2007, THE EXTENDED OR RENEWED LICENSE IS SUBJECT TO
32 THIS SECTION, EFFECTIVE ON THE FIRST DAY OF THE RENEWAL OR EXTENSION TERM,
33 EXCEPT THAT FOR A LICENSE WITH AN EXISTING TERM THAT EXPIRES BEFORE JULY 1,
34 2010 THE TOTAL OF THE RATES OF THE LICENSE FEE AND OF ANY TRANSACTION
35 PRIVILEGE TAX ON GROSS REVENUES SHALL NOT EXCEED:

36 1. FOUR PER CENT, IF THE GROSS EFFECTIVE RATE IN FORCE ON THE
37 EFFECTIVE DATE OF THIS SECTION AS SET FORTH IN THE EXTENDED OR RENEWED
38 LICENSE, TAKING INTO ACCOUNT ALL TAXES, FEES AND CHARGES OF THE LICENSING
39 AUTHORITY PAID BY A CABLE OPERATOR AND ITEMIZED TO SUBSCRIBERS, IS FOUR PER
40 CENT OR LESS.

41 2. IF THE GROSS EFFECTIVE RATE IN FORCE ON THE EFFECTIVE DATE OF THIS
42 SECTION IS MORE THAN FOUR PER CENT, FOUR PER CENT PLUS THE FOLLOWING
43 PERCENTAGE:

44 (a) IN THE FIRST YEAR OF THE EXTENSION OR RENEWAL TERM, THE GROSS
45 EFFECTIVE RATE MINUS FOUR PER CENT, MULTIPLIED BY THREE-FOURTHS.

1 (b) IN THE SECOND YEAR OF THE TERM, THE GROSS EFFECTIVE RATE MINUS
2 FOUR PER CENT, MULTIPLIED BY ONE-HALF.

3 (c) IN THE THIRD YEAR OF THE TERM, THE GROSS EFFECTIVE RATE MINUS FOUR
4 PER CENT, MULTIPLIED BY ONE-FOURTH.

5 (d) IN THE FOURTH YEAR OF THE TERM AND THEREAFTER, ZERO PER CENT.

6 I. NO LICENSING AUTHORITY MAY ISSUE ANY LICENSE FOR CABLE SERVICE
7 WITHIN ITS JURISDICTION ON TERMS OR CONDITIONS MORE FAVORABLE OR LESS
8 BURDENSOME THAN THOSE IN ANY EXISTING LICENSE FOR CABLE SERVICE ISSUED BY THE
9 LICENSING AUTHORITY. THIS PROHIBITION DOES NOT APPLY IF THE AREA FOR WHICH
10 THE LICENSE IS BEING SOUGHT IS NOT ACTUALLY BEING SERVED BY ANY EXISTING
11 CABLE OPERATOR HOLDING A LICENSE FOR THE AREA. FOR THE PURPOSES OF THIS
12 SUBSECTION, "ACTUALLY BEING SERVED" MEANS THAT CABLE SERVICE IS ACTUALLY
13 AVAILABLE TO SUBSCRIBERS TO SUCH EXTENT THAT THE ONLY ACT REMAINING IN ORDER
14 TO PROVIDE CABLE SERVICE IS THE PHYSICAL CONNECTION TO THE INDIVIDUAL
15 SUBSCRIBER LOCATION.

16 Sec. 3. Section 9-510, Arizona Revised Statutes, is amended to read:

17 9-510. Control of programming; commercial advertising

18 A. A licensing authority shall not directly or indirectly control the
19 content of any of the programming on a cable television system except those
20 channels dedicated to government access.

21 B. A LICENSING AUTHORITY MAY ALLOW COMMERCIAL ADVERTISING ON CHANNELS
22 DEDICATED TO GOVERNMENT ACCESS.

23 Sec. 4. Legislative findings

24 It is the public policy of this state and intent that this act be
25 enforced to the fullest extent permitted by any applicable federal law and
26 that the terms and conditions on which counties, cities, including charter
27 cities, and towns issue licenses to cable operators to use the public
28 highways are of statewide concern.